

MEMORANDUM

Agenda Item No. 8(J)(1)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

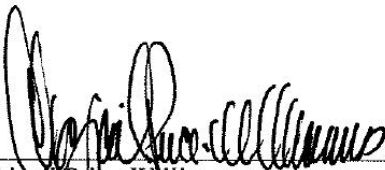
DATE: July 21, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution amending Resolution No. R-993-19 to authorize the County Mayor to extend MSC Miami Cruise Terminal LLC's (MMCT) financing period initially through October 31, 2020, and thereafter through and including February 15, 2021, in one or more increments based on MMCT's demonstrated progress in obtaining financing, subject to certain conditions; authorizing the County Mayor to negotiate and execute an amendment to the Terminal Development Management and Lease Agreement (Ground Lease) between the County and MMCT providing that the land Turnover Date as defined in the Ground Lease shall not be before April 15, 2021, and shall be no later than May 15, 2021, and requiring the incorporation of facilities into MMCT's project for Magical Cruise Company, Ltd., subject to the County and MMCT reaching agreement on all material financial terms relating to the shared facility; directing the County Mayor to negotiate any additional amendments or agreements necessary to accomplish the purposes set forth in the accompanying memorandum and to present such proposed amendments and agreements to the Board for review and approval within 120 days

Resolution No. R-728-20

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Rebeca Sosa.


Abigail Price-Williams
County Attorney


APW/smm

Memorandum



Date: July 21, 2020

To: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Amending Resolution No. R-993-19 to Allow for the Extension of MSC Miami Cruise Terminal LLC's (MMCT) Financing Period Upon the County's Receipt of Certain Commitments from MMCT and Directing the County Mayor or County Mayor's Designee to Negotiate an Amendment to the Ground Lease with MMCT and Additional Necessary Agreements

Recommendation

It is recommended that the Board of County Commissioners ("Board") approve the accompanying resolution, which:

- a. Amends Resolution No. R-993-19, which approved the Terminal Development Management and Lease Agreement ("Ground Lease") between Miami-Dade County (the "County") and MSC Miami Cruise Terminal LLC ("MMCT"), to authorize the County Mayor or County Mayor's designee to extend MMCT's financing period, initially through October 31, 2020, and thereafter through and including February 15, 2021 in one or more increments as reasonably determined by the County Mayor or County Mayor's designee based on MMCT's demonstrated progress on obtaining financing, and subject to the contingences described in the immediately following subsection;
- b. Authorizes the County Mayor or County Mayor's designee to negotiate and simultaneously with the exercise of the authority granted in the preceding paragraph, execute an amendment to the Ground Lease between the County and MMCT providing that the (1) "Turnover Date" as that term is defined and used in the Ground Lease shall not be before April 15, 2021, and shall be no later than May 15, 2021, and (2) project to be constructed under the Ground Lease shall incorporate facilities for Magical Cruise Line, Ltd.'s (d/b/a/ Disney Cruise Line) ("Disney") use, including pier work for Berth 10, subject to the County and MMCT reaching agreement on all material financial terms regarding the shared facility, but not as a precondition to granting the extension of the financing period as provided in the preceding paragraph; and
- c. Directs the County Mayor or County Mayor's designee to negotiate any further modifications to the Ground Lease and such additional agreements as may be necessary to accomplish the purposes described in this memorandum. The County Mayor or County Mayor's designee is further directed to present any proposed amendments, additional agreements, or both, to the Board within 120 days for review and approval.

Scope

PortMiami is located within District 5, which is represented by Commissioner Eileen Higgins. The impact of the agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

Background

On September 19, 2019, the Board approved Resolution No. R-993-19, authorizing the Ground Lease between the County and MMCT, a subsidiary of MSC Cruises S.A. (“MSC”), for the design, construction, operation, and maintenance of a new mega cruise terminal for Berths 8 and 9 at PortMiami (the “Port”). MMCT’s design and construction investment in the project was anticipated to be at least \$300,000,000 for a state-of-the-art complex, including two berths that accommodate vessels with a capacity of up to 7,000 passengers each; parking, intermodal areas, and roadway infrastructure; provisioning and ground transportation facilities; and offices to serve as MSC’s United States headquarters. MMCT would pay the County land lease rent beginning fiscal year 2023 at \$15,200,000 and increasing by 1.5% annually the first twenty years, increasing at 3% each year for the next twenty years, and then increasing at a price index calculation for the remainder of the term. The County would be obligated to make contributions of approximately \$35,000,000 for environmental mitigation, capital contributions, and other costs (including costs such as liquidated damages for County-caused delays and the provision of temporary processing facilities for MMCT, if needed). Under the Ground Lease, the County is required to turn over the demised premises to MMCT by October 15, 2020, for the commencement of construction, and the substantial completion date for the terminal was estimated for October 15, 2022. The Ground Lease further granted MMCT a right of termination if it was unable to find acceptable financing on or before July 31, 2020.

The ongoing effects of the novel coronavirus disease 2019 (COVID-19), notably the suspension of cruising since mid-March 2020, have disrupted the proposed timelines and costs for several planned capital projects at the Port, including the MMCT terminal complex. On March 26, 2020, in light of the COVID-19 pandemic the County and MMCT entered into a Standstill Agreement, the effect of which was to suspend temporarily certain obligations of the parties in order to allow both parties time to consider and negotiate a revised project schedule potentially among other terms, while also avoiding either party from issuing force majeure notices yet preserving all their respective rights. The County and MMCT have agreed, in principle, to make certain amendments to the Ground Lease as set out in the accompanying resolution, with further amendments anticipated in due course.

MMCT has spent considerable effort to secure financing for the project despite the uncertain economic climate; however, MMCT has requested additional time to work out the investment details. In parallel, the County has requested MMCT’s agreement to extend the County’s deadline for delivering a clean site to MMCT, the benefit of which is set out below.

Consequently, the accompanying resolution seeks to address the current impacts of COVID-19 on the MMCT project in two phases. First, to facilitate the parties’ negotiation of the amendment and agreement described in the following paragraph, the parties will enter into an

amendment to the Ground Lease that will (1) extend the County's deadline for delivering a clean site to MMCT from October 15, 2020, to no earlier than April 15, 2021, but not later than May 15, 2021, and (2) ensure that the MMCT terminal development includes facilities for joint use by Disney, including the buildout of a pier at Berth 10, subject simultaneously to the County and MMCT reaching agreement on all material financial terms of the shared facility. Simultaneously with, or as part of, the execution of the previously described amendment, the County Mayor or County Mayor's designee will have the authority to extend the financing period deadline initially through October 31, 2020, and thereafter through and including February 15, 2021, in one or more increments based on MMCT's demonstrated progress on obtaining financing for the project, as reasonably determined by the County Mayor or County Mayor's designee. The granting of extensions to the financing period, however, will not be contingent upon the County and MMCT reaching an agreement regarding Disney's joint use of the shared facility.

Second, the accompanying resolution directs the County Mayor or County Mayor's designee to negotiate a further amendment to the Ground Lease based on the revised project scope. Such changes may include, among other terms, revised financing and payment terms, changes to the project footprint and such other infrastructure changes as may be necessary to accommodate three cruise ships. This amendment will be brought back to the Board within 120 days of the effective date of the accompanying resolution for the Board's review and approval. The accompanying resolution will further require the County to negotiate a preferential berthing rights agreement with Disney based on this multi-berth shared facility proposal. This new agreement with Disney will be brought before the Board together with the MMCT amendment.

The intent of a multi-berth shared facility with MMCT and Disney is a cost-savings from the County's previously contemplated proposal for a new Disney terminal. On September 5, 2018, the Board approved Resolution No. R-891-18, Amendment No. 2 to the Terminal Berthing Agreement with Disney, including a Memorandum of Understanding establishing a framework for the design and construction of a new Disney terminal on the Port. Due to land constraints, the previously contemplated project required a split operation with a waterside berth and landing facility and a landside terminal in the interior of the Port, inclusive of parking and ground transportation areas. The project would have also required a secure roadway connecting the two facilities. The merger of the MMCT and Disney projects creates the opportunity for savings to the County on the costs associated with elements that would have been part of the separate split Disney terminal project.

Fiscal Impact/Funding Source

The accompanying resolution will have a positive fiscal impact on the County. With the delegated authority to enter into an initial amendment pushing the land Turnover Date to no earlier than April 15, 2021, but no later than May 15, 2021 and securing MMCT's commitment to incorporate Disney into its project (subject to the County and MMCT reaching a definitive agreement on material financial terms), the County will (1) be able to realize savings by either obtaining better pricing on (e.g., through a new competitive process) or slowing the work that the County is required to perform for a cargo terminal operator as part of the land turnover conditions under the Ground Lease, and (2) have the opportunity to

achieve savings on capital expenses from the merger of the MMCT and Disney projects, if an agreement can be reached between the County and MMCT on that matter. The extension of MMCT's financing period will not have a fiscal impact on the County.

The amendments to the Ground Lease and the new preferential berthing rights agreement with Disney that will be brought before the Board for review and approval within 120 days will also have a positive future impact on the County. The precise fiscal impact of the amendment to the Ground Lease and new Disney preferential berthing rights agreement will be set forth in future item that will be brought before the Board for its review and approval.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring this Agreement are Hydi Webb, Deputy Director and Andy Hecker, Managing Port Director, CFO.

Delegated Authority

The accompanying resolution authorizes the County Mayor or County Mayor's designee to (1) extend MMCT's financing period initially through October 31, 2020, and thereafter, in one or more increments based on MMCT's demonstrated progress in obtaining financing for the project, through and including February 15, 2021, contingent upon the amendment of the Turnover Date as provided herein and MMCT's agreement to include facilities for Disney as part of the project constructed under the Ground Lease, as long as MMCT and the County are able to reach agreement on all material financial terms regarding Disney's use of the shared facility and (2) negotiate and execute an amendment to the Ground Lease to extend the Turnover Date to a date no earlier than April 15, 2021, but not later than May 15, 2021, and, subject to the parties reaching agreement on the material financial terms thereof, require MMCT to include facilities for Disney and Berth 10 as part of the project constructed under the Ground Lease. For the abundance of clarity, the County's granting of extensions to the financing contingency will not be conditioned on MMCT reaching a definitive agreement on the material financial terms of Disney's use of the shared facility.



Jack Osterholt
Deputy Mayor



MEMORANDUM
(Revised)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: July 21, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(J)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____



Mayor

Agenda Item No. 8(J)(1)

Veto _____

7-21-20

Override _____

RESOLUTION NO. R-728-20

RESOLUTION AMENDING RESOLUTION NO. R-993-19 TO AUTHORIZE THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXTEND MSC MIAMI CRUISE TERMINAL LLC'S (MMCT) FINANCING PERIOD INITIALLY THROUGH OCTOBER 31, 2020, AND THEREAFTER THROUGH AND INCLUDING FEBRUARY 15, 2021, IN ONE OR MORE INCREMENTS BASED ON MMCT'S DEMONSTRATED PROGRESS IN OBTAINING FINANCING, SUBJECT TO CERTAIN CONDITIONS; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AN AMENDMENT TO THE TERMINAL DEVELOPMENT MANAGEMENT AND LEASE AGREEMENT (GROUND LEASE) BETWEEN THE COUNTY AND MMCT PROVIDING THAT THE LAND TURNOVER DATE AS DEFINED IN THE GROUND LEASE SHALL NOT BE BEFORE APRIL 15, 2021, AND SHALL BE NO LATER THAN MAY 15, 2021, AND REQUIRING THE INCORPORATION OF FACILITIES INTO MMCT'S PROJECT FOR MAGICAL CRUISE COMPANY, LTD., SUBJECT TO THE COUNTY AND MMCT REACHING AGREEMENT ON ALL MATERIAL FINANCIAL TERMS RELATING TO THE SHARED FACILITY; AND DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE ANY ADDITIONAL AMENDMENTS OR AGREEMENTS NECESSARY TO ACCOMPLISH THE PURPOSES SET FORTH IN THE ACCOMPANYING MEMORANDUM AND TO PRESENT SUCH PROPOSED AMENDMENTS AND AGREEMENTS TO THE BOARD FOR REVIEW AND APPROVAL WITHIN 120 DAYS

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Adopts the foregoing recital as true and correct and incorporates said recital as if set forth herein.

Section 2. Amends Resolution No. R-993-19 to authorize the County Mayor or County Mayor's designee to extend MSC Miami Cruise Terminal LLC's ("MMCT") financing period initially through October 31, 2020, and thereafter through and including February 15, 2021, in one or more increments, as reasonably determined by the County Mayor or County Mayor's designee based on MMCT's demonstrated progress on obtaining financing, and simultaneously with the satisfaction of the contingency set forth in section 3.

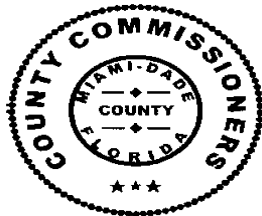
Section 3. Authorizes the County Mayor or County Mayor's designee to negotiate and, prior to exercising the authority delegated in section 2, execute an amendment to the Terminal Development Management and Lease Agreement ("Ground Lease") between the County and MMCT providing that the (a) "Turnover Date" for the land, as that term is defined and used in the Ground Lease, shall not be before April 15, 2021, and shall be no later than May 15, 2021, and (b) project constructed by MMCT under the Ground Lease, as may be amended, shall incorporate facilities for the use of Magical Cruise Company, Ltd. (d/b/a Disney Cruise Line) ("Disney"), subject to the County and MMCT reaching agreement on all material financial terms regarding the shared facilities. The foregoing condition contained in clause (b) of this Section shall not be construed to condition the extensions of the financial period granted under section 2 on the County and MMCT agreeing on the material financial terms of Disney's use of the shared facility.

Section 4. Directs the County Mayor or County Mayor's designee to negotiate any further modifications to the Ground Lease and such additional agreements (including, but not limited to, a multi-berth preferential berthing rights agreement with Disney), as may be necessary to accomplish the purposes described in the accompanying memorandum. The County Mayor or County Mayor's designee is further directed to present any proposed amendments, additional agreements, or both, to the Board within 120 days of the effective date of this resolution for the Board's review and approval.

The foregoing resolution was offered by Commissioner **Jean Monestime**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman	aye		
Rebeca Sosa, Vice Chairwoman	aye		
Esteban L. Bovo, Jr.	aye	Daniella Levine Cava	aye
Jose "Pepe" Diaz	aye	Sally A. Heyman	aye
Eileen Higgins	aye	Barbara J. Jordan	aye
Joe A. Martinez	aye	Jean Monestime	aye
Dennis C. Moss	aye	Sen. Javier D. Souto	aye
Xavier L. Suarez	absent		

The Chairperson thereupon declared this resolution duly passed and adopted this 21st day of July, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

Melissa Adames

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Steven B. Bass
Miguel A. Gonzalez